**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

132

**CWP-9599-2023 (O&M)
Decided on : 05.08.2024**

Piyush Beriwal

. . . Petitioner(s)

Versus

Income Tax Officer, Ward 3(1),
Gurgaon and another

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

PRESENT: Mr. Chetan Mittal, Sr. Advocate with
Ms. Divya Arora, Advocate,
Mr. Ritvik Garg, Advocate and
Mr. Piyush Beriwal, Advocate (**appearing through V.C.**)
for the petitioner(s).

Mr. Varun Issar, Sr. Standing Counsel
for the respondent(s).

****

SANJEEV PRAKASH SHARMA, J. (Oral)

CM-12183-CWP-2024

I. Present application has been filed under Section 151 CPC, for pre-poning the date of hearing, which is fixed for 03.10.2024, keeping in view the fact that present matter is squarely covered by the judgment dated 19.07.2024, passed by the Coordinate Division Bench of this Court in CWP-15745-2024.

II. Notice of this application to the non-applicants/respondents.

III. Mr. Varun Issar, Sr. Standing Counsel, accepts notice on behalf of the non-applicants/respondents, and raises no objection in allowing the prayer made in the application by the applicant-petitioner.

IV. In view of above, prayer made in the application is allowed.

Accordingly, date of hearing in the main case i.e. CWP-9599-2023, is advanced from 03.10.2024 to 05.08.2024 i.e. today itself.

CM stands disposed of.

<u>CWP -12186-CWP-2024</u>

I. Present application has been filed under Section 151 for placing on record Annexures P-7 to P-11.

II. Allowed as prayed for. Annexures P-7 to P-11 filed along with the application are taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

CM stands disposed of.

<u>CWP-9599-2023 (O&M)</u>

1. In view of the order of even date passed in CM-12183-CWP-2024, present writ petition is being taken up for final disposal.

2. CM-12184-CWP-2024 has been filed on behalf of the applicant-petitioner for seeking disposal of the present writ petition in light of the judgment/order dated 19.07.2024, passed by the Coordinate Division Bench of this Court in CWP-15745-2024.

2. Notice of this application to the non-applicants/respondents.

3. Mr. Varun Issar, Sr. Standing Counsel, accepts notice on behalf of the non-applicants/respondents.

4. Learned counsel for both the sides are *ad idem* that the issue raised in these connected Writ Petitions stands finally adjudicated by the Coordinate Division Bench of this Court vide order dated ***<u>19.07.2024</u>*** in a bunch of Writ Petitions in which the lead case is ***<u>CWP-15745-2024</u>*** titled as ***<u>Jatinder Singh Bhangu</u>*** Vs. ***<u>Union of India and Others,</u>*** whereby, the

Coordinate Division Bench of this Court has subscribed the view expressed by Bombay, Telangana and Gauhati High Courts.

5. The Coordinate Division Bench, has passed the following judgment/order:-

> *"15. From the perusal of Section 151A, it is quite evident that scheme of faceless assessment is applicable from the stage of show cause notice under Section 148 as well as 148A. Clause 3 (b) of notification dated 29.03.2022 issued under Section 151A clearly provides that scheme would be applicable to notice under Section 148. Even otherwise, it is a settled proposition of law that assessment proceedings commence from the stage of issuance of show cause notice. The object of introduction of faceless assessment would be defeated if show cause notice under Section 148 is issued by Jurisdictional Assessing Officer. The respondents are heavily placing reliance upon office memorandum and letter issued by departmental authorities. It is axiomatic intax jurisprudence that circulars, instructions and letters issued by Board or any other authority cannot override statutory provisions. The circulars are binding upon authorities and Courts are not bound by circulars. The mandate of Section 144B, 151A read with notification dated 29.03.2022 issued thereunder is quite lucid. There is no ambiguity in the language of statutory provisions, thus, office memorandum or any other instruction issued by Board or any other authority cannot be relied upon.*

Instructions/circulars can supplement but cannot supplant statutory provisions.

16. In the wake of above discussion and findings, we find it appropriate to subscribe view expressed by Bombay, Telangana and Gauhati High Court. The instant petitions deserve to be allowed and accordingly allowed.

17. The notices issued by Jurisdictional Assessing Officer under Section 148 are hereby quashed with liberty to respondent to proceed in accordance with procedure prescribed by law.”

6. In view of the above, we allow this Writ Petition in the aforesaid terms. Accordingly, order/notices dated 03.03.2023 and 07.04.2023 are set-aside. The other questions raised in the present writ petition are not pressed by the learned counsel for the petitioner. Accordingly, the same are dismissed as not pressed.

Pending applications, if any, shall stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

August 05, 2024
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No